

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
 )  
1998 Biennial Regulatory Review -- )  
Petition for Section 11 Biennial Review )  
filed by SBC Communications, Inc., )  
Southwestern Bell Telephone Company, )  
Pacific Bell, and Nevada Bell )

CC Docket No. 98-238

COMMENTS

The National Exchange Carrier Association, Inc. (NECA)<sup>1</sup> herein files its comments regarding the Federal Communications Commission's (FCC or Commission) *Notice of Proposed Rulemaking* in the above captioned matter.<sup>2</sup> The *NPRM* invites comment on several proposals submitted by SBC Communications, Inc. (SBC) in a *Petition for Section 11 Biennial Review*.<sup>3</sup>

The proposals mentioned in the *Petition* generally focus on requirements that affect price cap carriers. However, a number of the regulations being reviewed also impact non-price cap local exchange carriers (LECs) who participate in NECA's Common Line (CL) and Traffic Sensitive (TS) access charge pools. NECA accordingly

<sup>1</sup> Under the Commission's rules, NECA is responsible for the preparation of access charge tariffs on behalf of telephone companies that do not file separate tariffs; and for the collection and distribution of associated access charge revenues. The Commission's actions in this docket will directly impact the preparation of access charge tariffs, and resulting settlements for members of the NECA pools. See 47 C.F.R. §§ 69.603 and 69.604.

<sup>2</sup> 1998 Biennial Regulatory Review – Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket No. 98-177, *Notice of Proposed Rulemaking*, FCC 98-238 (rel. Nov. 24, 1998)(*NPRM*).

<sup>3</sup> SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell, *Petition for Section 11 Biennial Review* (fil. May 8, 1998)(*Petition*).

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offers the following comments in support of SBC's *Petition*.

**I. Rate of Return Prescription.**

The Commission seeks comment on SBC's contention that section 65.101<sup>4</sup> is no longer needed under price cap regulation.<sup>5</sup> Section 65.101 of the Commission's rules triggers an inquiry into whether a revised rate of return prescription is needed based on an examination of monthly average yields on ten-year Treasury securities.<sup>6</sup>

NECA agrees that section 65.101 no longer serves any purpose for carriers subject to price cap regulation. NECA further proposes that this rule should be eliminated for rate of return carriers as well. In today's highly volatile telecommunications and financial markets, small, rural carriers and their customers are not well served by an automatic mechanism that fails to recognize the unique circumstances faced by these carriers.

The automatic mechanism set forth in section 65.101 of the rules assumes that changes in one, conservative benchmark index of Treasury securities can act as an indicator that the overall cost of capital has changed significantly, thereby triggering an inquiry into whether a represcription is needed. Whatever merits this approach had in the past, it clearly has little significance when applied to the actual conditions currently faced by rate of return LECs. Initiating unnecessary inquiries into whether represcriptions are needed diverts industry and Commission resources from more productive areas, especially implementation of the pro-competitive and universal service protection provisions of the Telecommunications Act of 1996. Additionally, the expectation of repetitive, unnecessary inquiries into rate of return represcriptions could itself cause

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<sup>4</sup> 47 C.F.R. § 65.101 et. seq.

<sup>5</sup> *NPRM* at ¶ 7. *See also Petition* at 10.

<sup>6</sup> 47 C.F.R. § 65.101(a).

investors to perceive small, rural LECs as riskier enterprises, thereby further driving up the cost of equity funding for these carriers, and making it difficult for these carriers to raise capital urgently needed for infrastructure improvements.

Rather than depend on an unreliable and largely irrelevant automatic benchmark, the Commission should open inquiries into the need for rate of return represcription only on an as-needed basis. Given the significant risks and uncertainties facing incumbent LECs at this time, the present prescribed return is a conservative estimate of incumbent LECs' cost of capital. Any re-evaluation of the prescribed rate of return can only take place after the obligations, costs, jurisdictional cost recovery mechanisms, and interstate revenue streams from access charges and universal service support are fully known. This will be the case only after the many unresolved existing regulatory proceedings, such as Access Reform, Separations Reform, and Universal Service, are completed for small rate of return carriers.

## **II. Cash Working Capital Studies.**

The Commission seeks comment on SBC's assertion that the lead-lag study method used by Class A carriers<sup>7</sup> to calculate the cash working capital element of the interstate rate base, is overly burdensome.<sup>8</sup> Class B carriers also have the option of using a standard allowance method for their calculations. SBC suggests that a less burdensome method be allowed for Class A carriers to complete cash working capital requirements. SBC also suggests that carriers be allowed to forego recovery of this element since it

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<sup>7</sup> Class A companies are defined as those having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold. Class B companies are defined as those having annual revenues from regulated telecommunications operations that are less than the indexed revenue amount. See 47 C.F.R. § 32.11.

<sup>8</sup> See 47 C.F.R. § 65.820(d). *NPRM* at ¶ 8. See also *Petition* at 10-11.

makes up less than 1 percent of the total rate base.<sup>9</sup>

As explained by SBC, the full lead-lag method for calculating CWC creates a heavy administrative burden. The alternative method provided in Commission rules for Class B carriers to calculate cash working capital is also complex and difficult for most of these carriers.<sup>10</sup> The rules further provide that Class B carriers may calculate CWC using a Common Carrier Bureau-specified standard allowance.<sup>11</sup> However, the current standard allowance of 15 days, which was originally determined by an analysis of Tier I companies' 1988 Tariff Review Plans,<sup>12</sup> is out of date and appears inadequate.

The current standard, established nearly 10 years ago,<sup>13</sup> does not reflect the current business operations of small, rural carriers. For example, smaller companies typically are compelled to pay bills more promptly than larger carriers, to avoid the risk of adverse effects on credit ratings. For this reason, revenue receipt lags have a more pronounced effect on small carriers. Relatively speaking, these companies' books typically reflect less cash on hand, and for shorter periods of time.

The Commission should therefore act immediately to revise the standard allowance period from the current 15 days to an interval more reflective of the operating experience of small rate of return carriers. Based on current information, it appears that a standard allowance period in the range of 30 to 45 days would be acceptable for most smaller carriers.<sup>14</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 65.820(d).

<sup>11</sup> *Id.*

<sup>12</sup> See Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, *Order on Reconsideration*, 4 FCC Rcd 1697 (1989).

<sup>13</sup> 47 C.F.R. § 65.820(d).

<sup>14</sup> The results of several NECA member companies' recent studies suggest a low standard allowance in the

### **III. Detariffing of Services.**

The Commission requests comment on SBC's belief that certain LEC services, including special access and direct trunked transport services, should be detariffed.<sup>15</sup> SBC argues that these services are competitive, therefore tariffing is no longer necessary.<sup>16</sup>

NECA agrees that the Commission should move forward with a review of its regulations to incorporate more pricing flexibility options for all LECs. This will result in additional options for customers, allow for expedited delivery of services to customers, and free the Commission from reviewing repetitive petitions for waiver. Additionally, pricing flexibility is an integral component to the successful introduction of advanced technologies and new services to the market place.

### **IV. The Commission Should Eliminate Unnecessary Reporting Requirements.**

SBC proposes a number of additional changes to the rules that would result in decreased reporting requirements. NECA supports the reduction in reporting requirements. In addition, the Commission should eliminate current requirements for NECA to submit certain unnecessary reports.

The Commission requires NECA to submit a minutes of use (MOU) and pooling report on a quarterly basis.<sup>17</sup> Consistent with the Commission's philosophy to repeal regulations that are no longer in the public interest and impose administrative burdens,

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range of 35 days, and a high allowance of up to 50 days.

<sup>15</sup> *NPRM* at ¶ 9. *See also Petition* at 21-23.

<sup>16</sup> *Petition* at 22.

<sup>17</sup> *See* Establishment of a Program to Monitor the Impact of Joint Board Decisions, *Order*, 2 FCC Rcd 5266 (1987) and Letter of Gerald Brock, Chief, Common Carrier Bureau, Federal Communications Commission, to Bruce Baldwin, President, NECA (Aug. 15, 1989)(*Commission Letter*).

the Commission should eliminate the requirement that NECA file these reports.<sup>18</sup>

Initially the Commission appeared to need MOU information to assess the impacts of proposed access tariff filings, monitor trends in the industry, and view overall performance of traffic.<sup>19</sup> Today, the Commission can look to alternative sources for this information. For example, NECA files Dial Equipment Minutes for all LECs,<sup>20</sup> and Tier I carriers submit ARMIS reports.<sup>21</sup> Additionally, the pooling portion of the report duplicates information that is included in NECA's annually-filed 492 Report.<sup>22</sup> The Commission should therefore eliminate the requirement for NECA to submit MOU and pooling reports, as this information is available through other sources.

Section 69.605(e) of the Commission's rules also requires NECA to submit a cost study review process report on February 1 of each year.<sup>23</sup> This report is time and resource intensive. No one has ever commented on this report, or contacted NECA regarding the information contained therein. Since information on NECA cost study review activities is readily available to Commission staff on request, NECA suggests that the requirement for formal submission of this information be eliminated as well.

## **V. Conclusion**

NECA agrees that the Commission should consider changes to its rules to make them less burdensome and more meaningful in today's environment, as well as allow

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<sup>18</sup> The Commission itself has recognized that such reports would "be revised should the need no longer exist or should a satisfactory substitute for the information be found." *See Commission Letter*.

<sup>19</sup> *See Id.*

<sup>20</sup> *See Establishment of a Program to Monitor the Impact of Joint Board Decisions, Order*, 2 FCC Rcd 5266 (1987).

<sup>21</sup> *See* 47 C.F.R. § 43.21.

<sup>22</sup> *See* 47 C.F.R. § 1.795 and 47 C.F.R. § 65.500.

<sup>23</sup> 47 C.F.R. § 69.605(e).

LECs more flexibility in responding to customer needs. The Commission should also consider eliminating unnecessary reporting requirements, as suggested by SBC, and should eliminate unnecessary reporting requirements imposed upon NECA.

Respectfully submitted,

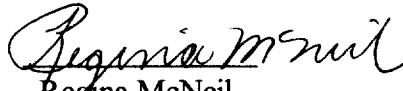
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January 11, 1999

### Certificate of Service

I hereby certify that a copy of the foregoing Comments were served this 11th day of January 1999, by mailing copies thereof by United States Mail, first class postage paid or by hand delivery, to the persons listed below.

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